TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, October 9, 2024 3:00 p.m.
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa

The tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument, **YOU MUST NOTIFY** the Judge's Judicial Assistant by telephone at **(707) 521-6602**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

If the tentative ruling is accepted, no appearance is necessary unless otherwise indicated.

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Department 19 Hearings
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PLEASE NOTE: The Court's Official Court Reporters are "not available" within the meaning of California Rules of Court, Rule 2.956, for court reporting of civil cases.

1. 23CV00282, Penaloza-Zarco v. Silva-Carrillo

Plaintiff Beatriz Penaloza-Zarco ("Plaintiff") filed the currently operative complaint (the "Complaint") in this action against Juan Jose Silva-Carrillo ("Defendant"), and Does 1-20, arising out of transactions related to multiple properties.

This matter is on calendar for the motion by Plaintiff pursuant to Cal. Code Civ. Proc. ("CCP") § 473 for leave to amend the Complaint. The motion is opposed by Defendant. The Motion is **GRANTED**.

I. Facts and Procedure

The original complaint in this action was filed by Plaintiff on August 23, 2023. Plaintiff avers that she discovered additional information in July 2024, leading to assertion of seven new causes of action. This motion followed on August 28, 2024.

The parties are set for trial on March 5, 2025.

II. Governing Authorities

The California Code of Civil Procedure provides that a court "may in the furtherance of justice, and on any terms as may be proper" allow a party to amend any pleading to correct a mistake. CCP § 473(a)(1). Likewise, the court may "in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars". CCP § 473(a)(1). "Any judge, at any time before or after commencement of trial, in the furtherance of justice, and upon such terms as may be proper, may allow the amendment of any pleading or pretrial conference order." CCP § 576. The general rule is "liberal allowance of amendments." *Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939; see *Lincoln Property Co., Inc. v. Travelers Indemnity Co.* (2006) 137 Cal.App.4th 905, 916. The "policy of great liberality" applies to amendments "at any stage of the proceedings, up to and including trial." *Magpali v. Farmers Group* (1996) 48 Cal.App.4th 471, 487. "Absent a showing of prejudice to the adverse party, the rule of great liberality in allowing amendment of pleadings will prevail." *Board of Trustees v. Superior Court* (2007) 149 Cal. App.4th 1154, 1163.

Absent a showing of prejudice, delay alone is not a basis for denial of leave to amend. *Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 563. "(I)t is irrelevant that new legal theories are introduced as long as the proposed amendments relate to the same general set of facts." *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048 [internal citations omitted].

> The cases on amending pleadings during trial suggest trial courts should be guided by two general principles: (1) whether facts or legal theories are being changed and (2) whether the opposing party will be prejudiced by the proposed amendment. Frequently, each principle represents a different side of the same coin: If new facts are being alleged, prejudice may easily result because of the inability of the other party to investigate the validity of the factual allegations while engaged in trial or to call rebuttal witnesses. If the same set of facts supports merely a different theory [then] no prejudice can result.

McMillin v. Eare (2021) 70 Cal.App.5th 893, 910, quoting *City of Stanton v. Cox* (1989) 207 Cal.App.3d 1557, 1563.

It is within the court's discretion to deny leave to amend where the amendment has been pursued in a dilatory manner, and that delay has prejudiced other parties. Prejudice exists where the amendment would result in the delay of trial, where there has been a critical loss of evidence, where amendment would add substantially to the costs of preparation, or where it would substantially increase the burdens of discovery. *Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 486-488; see *P & D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1345; *Fisher v. Larsen* (1982) 138 Cal.App.3d 627, 649.

Great liberality applies to amendment unless the amendment raises new and substantially different issues from those already pleaded. *McMillin v. Eare, supra,* 70 Cal.App.5th at 1379. In exercising its discretion over amendment, the court will consider whether there is a reasonable excuse for the delay, whether the change relates to facts or legal theories, and whether the

opposing party will be prejudiced by the amendment. *Duchrow v. Forrest* (2013) 215 Cal.App.4th 1359, 1378. The underlying merits of the proposed cause of action amendments are not relevant to determining whether amendment is appropriate, as long as they relate to the same general set of facts, as the amended pleadings may be attacked by demurrer, motion for judgment on the pleadings, or other similar proceedings. *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048. Denying leave to amend due to failure to sufficiently plead a cause of action would be most appropriate where the defect cannot be cured by further amendment. *California Casualty Gen. Ins. Co. v. Superior Court* (1985) 173 Cal.App.3d 274, 280–281; disapproved of on different grounds by *Kransco v. American Empire Surplus Lines Ins. Co.* (2000) 23 Cal.4th 390. The exception would lie where a plaintiff makes contradictory pleadings. "As a general rule a party will not be allowed to file an amendment contradicting an admission made in his original pleadings. If it be proper in any case, it must be upon very satisfactory evidence that the party has been deceived or misled, or that his pleading was put in under a clear mistake as to the facts." *Brown v. Aguilar* (1927) 202 Cal. 143, 149.

"(T)he court's discretion to impose conditions on leave to amend the complaint extends only to those conditions which are just, i.e., intended to compensate the defendants for any inconvenience belated amendment may cause." *Armenta ex rel. City of Burbank v. Mueller Co.* (2006) 142 Cal.App.4th 636, 642.

III. Analysis

A. Unwarranted Delay

First, unwarranted delay is a substantial factor in determining whether leave to amend is proper. *Emerald Bay Community Assn. v. Golden Eagle Ins. Corp.* (2005) 130 Cal.App.4th 1078, 1097. Here, the delay appears neither unwarranted nor undue. This case was filed roughly a year prior to the instant motion. Plaintiff discovered the facts relevant to the new causes of action in the course of responding to Defendant's discovery. Plaintiff made this discovery in July of 2024. The instant motion was filed the following month. Undue delay does not appear to be present.

B. Prejudice

First, it is clear that the amendment proposes to add a variety of new facts, which is usually indicative of prejudice. However, while Defendant flatly avers that this will create substantial discovery costs, he has provided no evidence to this effect. Defendant does aver that a new deposition may have to occur.

While it is likely that some discovery will have to occur on Plaintiff's new claims, the Court finds that this alone does not amount to prejudice justifying denial of the motion. As Plaintiff's claims are directly derived from newly discovered evidence, there is no indicia that there has been a critical loss of evidence. Defendant has provided no evidence that his costs of preparation will be substantially increased, or that discovery will increase substantially. Trial is currently set for March 5, 2025. Therefore, there is not adequate basis to deny the motion.

C. Conditions to Amendment

Defendant requests that if the Court were to grant the motion, the leave to amend be conditioned on allowing Defendant an additional deposition, since Defendant has not had an opportunity to ask Plaintiff about these fresh allegations. Plaintiff, on reply, merely says additional deposition time is not justified, with no argument or authority to support this position. Defendant's request and position is persuasive. Plaintiff has raised substantial new claims as part of the proposed amended complaint, including seven new causes of action predicated on facts not previously asserted. To the degree that Defendant experiences prejudice from this amendment, allowing an additional deposition of Plaintiff appears to be the most thorough abrogation of that prejudice. Defendant has displayed adequate good cause for an additional deposition. Defendant shall be entitled to notice an additional deposition of Plaintiff within 30 days of notice of this order.

No undue delay being present, and insufficient showing of prejudice being displayed, the motion for leave to amend is GRANTED. Defendant is entitled to an additional deposition of Plaintiff as a predicate to amendment.

IV. Conclusion

Based on the foregoing, the motion for leave to amend is GRANTED with the conditions above. Plaintiff's counsel shall submit a written order to the court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

2-3. 24CV01074, Zerah v. Guerneville School District

AS A PRELIMINARY MATTER: Both Plaintiffs and the County Defendants have submitted copies of Zerah's claim filed with the County, which contains Zerah's full and unredacted social security number. This information has no bearing on the merits of the claims or arguments submitted by the parties. Only the last 4 of a social security number should be present on a court document. California Rule of Court 1.201 (a)(1). The Court may seal, if reasonably practicable, only portions of those documents and pages as is necessary. On the Court's own motion, based on the privacy protections provided by California Rule of Court 1.201, the Court ORDERS that the clerk shall redact the first five digits of Zerah's social security number from the Declaration of David Lusby submitted in support of each motion on calendar, Exhibit A, on the fourth page of the declaration document, and the Plaintiffs' Objection to the Request for Judicial Notice, pgs. 15 and 28.

Plaintiff Jerry Zerah ("Zerah") and John Ross Mendenhall ("Mendenhall", together with Zerah, "Plaintiffs") filed the complaint (the "Complaint") in this action against defendants the County of Sonoma ("County"), Sonoma County Water Agency ("Water Agency", together with County, "County Defendants"), Guerneville Unified School District ("School District", together with County Defendants, "Defendants"), and Does 1-10,000, for multiple alleged causes of action arising out of damage following flooding of Plaintiffs' properties.

This matter is on calendar for the County Defendants' demurrers to causes of action two through seven within the Complaint pursuant to Cal. Code Civ. Proc. ("CCP") § 430.10(e) for failure to state facts sufficient to constitute a cause of action, and to the first cause of action under CCP §

430.10(f) for uncertainty. The Demurrer is **SUSTAINED without leave to amend as to the Second through Seventh causes of action**. The demurrer to the first cause of action is **OVERRULED.**

I. Legal Standards

A. General Demurrers

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. CCP § 430.30(a). In the event a demurrer is sustained, leave to amend should be granted where the complaint's defect can be cured by amendment. *The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.

At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591. Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. *Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702. Generally, the pleadings "must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts." *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1390; *FPI Develop., Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384. Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. *C.A. v. William S. Hart Union High School Dist*. (2012) 53 Cal.4th 861, 872. Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6. "The distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree." *Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 473. Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.

B. Demurrers for Uncertainty

A demurrer for uncertainty pursuant to CCP § 430.10(f) will be sustained only where a defendant cannot reasonably respond, i.e. cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against him or her. *Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616; *see also A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695 ("A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures.") (internal citation omitted). "Generally, the failure to specify the uncertain aspects of a complaint will defeat a demurrer based on the grounds of uncertainty. (Code Civ. Proc., § 430.60; 49 Cal. Jur. 3d, Pleading, § 150, pp. 555–556; *Coons v. Thompson* (1946) 75 Cal.App.2d 687, 690, 171 P.2d 443.)" *Fenton v. Groveland Community Services Dist.* (1982) 135 Cal.App.3d 797, 809 disapproved of on other grounds by *Katzberg v. Regents of University of California* (2002) 29 Cal.4th 300.

C. Government Claims Act

All claims for money or damages against a public entity must be presented in accordance with the provisions of the Government Code, unless it is subject to a specific exception. Gov. Code, § 905. These requirements are part of the "Government Claims Act" (the "Act"). See Gov. Code § 810, *et seq*. "The (Act) sets forth the general rule of immunity for public entities, abolishing all common law or judicially declared forms of liability for public entities, except for such liability as may be required by the state or federal constitution, or if a statute ... is found declaring them to be liable." *West Contra Costa Unified School District v. Superior Court of Contra Costa County* (2024) 103 Cal.App.5th 1243, 1254 (internal quotations omitted).

The Government Code requires that "[a] claim relating to a cause of action for death or for injury to person or to personal property…shall be presented as provided in Article 2 (commencing with Section 915) not later than six months after the accrual of the cause of action." Gov. Code §911.2(a). Claimants who fail to file a claim within the six-month period have one year from the accrual of the cause of action to request leave to submit an untimely claim. Gov. Code § 911.4. "[T]he claims presentation requirement applies to all forms of monetary demands, regardless of the theory of the action." *Sparks v. Kern County Board of Supervisors* (2009) 173 Cal.App.4th 794, 798. "The claim presentation requirement serves several purposes: (1) it gives the public entity prompt notice of a claim so it can investigate the strengths and weaknesses of the claim while the evidence is still fresh and the witnesses are available; (2) it affords opportunity for amicable adjustment, thereby avoiding expenditure of public funds in needless litigation; and (3) it informs the public entity of potential liability so it can better prepare for the upcoming fiscal year." *Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1776-1779; see also, *Sparks v. Kern County Board of Supervisors* (2009) 173 Cal.App.4th 794, 798.

The "accrual date" is "the date upon which the cause of action would be deemed to have accrued within the meaning of the statute of limitations which would be applicable" if the action were between private litigants and it marks the starting point for calculating the claims presentation period. Gov. Code §901; see also, *Rubenstein v. Doe No. 1* (2017) 3 Cal.5th 903; *Mosesian v. County of Fresno* (1972) 28 Cal.App.3d 493, 500. This statutory time limit is mandatory and is an essential element of a cause of action against a public entity. See, *Wood v. Riverside General Hospital* (1994) 25 Cal.App.4th 1113, 1119; see also, *Briggs v. Lawrence* (1991) 230 Cal.App.3d 605, 613. "Timely claim presentation is not merely a procedural requirement," but is a condition precedent to the claimant's ability to maintain an action against the public entity. *Shirk v. Vista Unified Sch. Dist.* (2007) 42 Cal.4th 201, 209. Thus, timely presentation is "an element of the plaintiff's cause of action." *Ibid.* "Only after the public entity's board has acted upon or is deemed to have rejected the claim may the injured person bring a lawsuit alleging a cause of action in tort against the public entity." *Ibid*. The failure to bring a timely claim bars the plaintiff from bringing suit against that entity. Gov. Code §945.4; see also, *State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1237. "The claimant bears the burden of ensuring that the claim is presented to the appropriate public entity." *DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 991.

Claims must be granted or denied within 45 days of submission, or thereafter they are rejected by operation of law. Gov. Code, § 911.6. A plaintiff may request to be relieved from their failure to file a timely claim by filing a petition with the court within 6 months after the claim was denied

or deemed denied. Gov. Code § 946.6(b)(3). Even with a timely claim, a plaintiff is obligated to bring their action within 6 months of the denial of their claim so long as the written notice under Gov. Code § 913 has been given. Gov. Code § 945.6(a)(1).

D. Inverse Condemnation

"(T)he immunities provided by the Government Claims Act do not insulate a public entity from liability for inverse condemnation; the constitutional provisions requiring compensation for property taken or damaged by a public use overrides the Government Claims Act and its statutory immunities. (*Citation*.) Thus, a plaintiff who establishes the elements of an inverse condemnation claim may recover for property damage even though his tort claim has been rejected." *Pacific Bell v. City of San Diego* (2000) 81 Cal.App.4th 596, 602–603 (Internal citations omitted).

"To state a cause of action for inverse condemnation, the property owner must show there was an invasion or appropriation (a "taking" or "damaging") of some valuable property right which the property owner possesses by a public entity and the invasion or appropriation directly and specially affected the property owner to his injury." *Beaty v. Imperial Irrigation Dist.* (1986) 186 Cal.App.3d 897, 903. "(W)hile an eminent domain proceeding contemplates a permanent acquisition of private property for a public use, an inverse condemnation action may be maintained for mere damage to property." *Beaty v. Imperial Irrigation Dist.* (1986) 186 Cal.App.3d 897, 904.

Plaintiff must plead facts sufficient "to show . . . that the damage resulted from an exercise of governmental power while seeking to promote the general interest in its relation to any legitimate object of government." *Baker v. Burbank-Glendale-Pasadena Airport Authority* (1985) 39 Cal.3d 862, 867 (internal quotations omitted). "In other words, in inverse condemnation, the government is obligated to pay for property taken or damaged for 'public use' or damaged in the construction of 'public improvements.'" *City of Los Angeles v. Superior Court* (2011) 194 Cal.App.4th 210, 221 (internal quotations omitted). "A party who does nothing more than establish property damage as the result of negligent conduct of public employees or a public entity has not established a right to recover under a claim of inverse condemnation." *Ibid.* "In an inverse condemnation action, the property owner need not show the public entity intended to take or damage the property; inverse actions have been permitted when the invasion occurred as a result of negligence". *Beaty v. Imperial Irrigation Dist.* (1986) 186 Cal.App.3d 897, 903.

II. Procedural and Evidentiary Issues

The County Defendants request judicial notice of their rejection of Zerah's claim tendered under the Government Claims Act. The documents for judicial notice are attached to the Declaration of David F. Lusby. The attachment of the documents to a declaration comports with Rule of Court 3.1306. Courts may take notice of public records, but not take notice of the truth of their contents. *Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375, as modified (June 28, 2011). The scope of the judicial notice taken is limited to the action of the executive agency. *Herrera* at 1375. Additional information which is included in the documentation or contentions as to the truth of the contents is not appropriate for judicial notice.

Id. In *Gong v. City of Rosemead*, the court stated "The court may take judicial notice of the filing and contents of a government claim, but not the truth of the claim." *Gong v. City of Rosemead* (2014) 226 Cal.App.4th 363, 369, fn. 1. Judicial notice is GRANTED as to the existence of the documents and their legal function.

Plaintiffs submit an opposition which in substance exceeds the 15-page limit set by California Rule of Court 3.1345. The Court elects to consider the full opposition, despite its lack of compliance with Rule of Court 3.1113 (d) (no responding memorandum shall exceed 15 pages).

Plaintiffs also repeatedly refer to their motion to amend, which was ruled on August 14, 2024. The Court denied the motion for failure to serve the School District with the motion. Plaintiffs' arguments on this point are not persuasive as a result.

III. Analysis

A. Immunity From Liability Under the Government Claims Act

"On a demurrer a court's function is limited to testing the legal sufficiency of the complaint. [Citation.] 'A demurrer is simply not the appropriate procedure for determining the truth of disputed facts.' [Citation.] The hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of documents whose truthfulness or proper interpretation are disputable. [Citation.]"). *Bounds v. Sup. Ct.* (2014) 229 Cal.App.4th 468, 477-478.

While the Plaintiffs are subject to slightly different analyses as to this argument, the conclusion is the same. Plaintiffs' tortious claims appear entirely precluded under the Government Claims Act. As a precursor, there is no allegation that Plaintiffs failed to discover the harm, and therefore delayed accrual of the necessity to either present their claims or file this action. *Cf., K.J. v. Arcadia Unified School District* (2009) 172 Cal.App.4th 1229. The Complaint contains no allegation that Mendenhall filed a claim with the County. Zerah filed his claim under the Act on June 2, 2023. Complaint ¶ 7. County Defendants denied the claims "on or about forty-five days thereafter". *Ibid.*

Mendenhall was obligated to file his claim under the Act with the County within six months of the date of accrual. See Gov. Code § 911.2. The Complaint clearly elucidates that the final act resulting in accrual of the claim occurred March 18, 2023. The County Defendants accurately argue that the time for Mendenhall to file his claim, and the subsequent opportunity to request relief from the failure to file a claim, have both lapsed. Timely presentation of claims is an element of any tort claims asserted against governmental entities. *Shirk v. Vista Unified Sch. Dist.* (2007) 42 Cal.4th 201, 209. Mendenhall has not pled any presentation of claims. His tort claims are entirely precluded as a result.

Zerah submitted his claim on June 3, 2023. The Complaint admits that his claim was denied "on or around" forty-five days after. The County Defendants have provided the denial letter, requesting judicial notice. The Court does take notice of the issuance of the notice, and the legal effect thereon under Gov. Code § 945.6. Even without taking judicial notice of the date on the

notice of rejection of claim, operation of law forecloses Zerah's claims. Zerah admits that the denial was timely in his pleading. The Notice was issued, as is addressed by the judicial notice taken above. The forty-five-day period expired on July 18, 2023. Six months thereafter is January 18, 2024. The Complaint was filed on March 7, 2024. Plaintiffs offer no explanation (nor does the code provide any applicable exception) to the six-month deadline set by Gov. Code § 945.6. Zerah's filing of the Complaint was therefore untimely after the denial of his claim.

Plaintiffs argue in response that the claim for Zerah was filed within six months after the accrual of the action. Plaintiffs misconstrue the County Defendants' argument. Plaintiffs are obligated to file any subsequent lawsuit within 6 months of denial of their claims. See Gov. Code § 945.6. The denial letter explicitly conveys this point of law. Plaintiffs did not file the Complaint timely after denial of Zerah's claim, and Mendenhall failed to file his claim altogether.

Plaintiffs also argue that intentional actions sufficient to support punitive damages are exempt from the general immunities in the Act. However, Plaintiffs plead no facts sufficient to state any such cause of action. There are no allegations of intentionality, nor facts alleged to support said accusations. Plaintiffs do not plead adequate facts to meet the standard for pleading punitive damages. Therefore, their arguments and citations on this point are not persuasive. Plaintiffs argue that nonfeasance is adequate but provides no authority stating as much. Intentional acts are generally distinguishable from the nonfeasance on which Plaintiffs predicate their case. Furthermore, Plaintiffs' authorities in this regard apply to the general immunities provided against particular types of damages, and not the procedural immunities granted by failure to comply with the claims process.

Plaintiffs re-raise multiple arguments previously raised by other motions. These arguments do not apply to the validity of the Complaint, and therefore do not merit further comment.

The defects presented by the Complaint, and associated judicial notice, do not appear capable of remedy through amendment. Plaintiffs' claims being untimely, the Court cannot see how amendment would correct this deficiency. Timely presentation of claims is a necessary element, and any untimely claims are barred. Gov. Code §945.4; see also, *State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1237.

Therefore, leave to amend appears improper.

Based on Government Code § 911.2, as to the second through seventh causes of action, the Demurrer is **SUSTAINED without leave to amend.**

B. Inverse Condemnation

The cause of action for inverse condemnation appears exempt from the Government Claims Act. The County Defendants therefore demur arguing that the cause of action is uncertain because it is unclear what allegations Plaintiffs aver are relevant to the cause of action. The Court disagrees. The elements of the cause of action are clearly pled in the preceding facts. Plaintiffs have incorporated those facts by reference into the cause of action. Plaintiffs allege that their property was damaged as a result of flooding from the nearby creek. Complaint ¶ 7-8. Plaintiffs

allege that the creek was modified by the County by construction of a levee, and that levee was created to protect the property of the School District from risks of flooding. Complaint ¶ 11. This accomplished a public purpose. Complaint ¶ 15, 16. The levee "forces Fife's Creek flood-water into Plaintiff's (sic) home and business property." Complaint ¶ 11. While the Complaint undoubtedly contains surplusage language, the elements of inverse condemnation are clearly present. Much of that surplusage appears to relate to the causes of action for which the demurrers have been sustained. The County Defendants do not appear to be unable to respond as a result.

Therefore, as to the first cause of action, the demurrer is **OVERRULED**.

IV. Conclusion

Based on the foregoing, the Demurrer is **SUSTAINED without leave to amend as to the Second through Seventh Causes of Action. As to the first cause of action, the demurrer for uncertainty is OVERRULED.**

The County's counsel shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

4-7. SCV-270877, Warnelius-Miller v. Marguglio

Plaintiffs Karin S. Warnelius-Miller and Justin B. Miller, both individually and as trustees of the "Warnelius-Miller Family Trust Justin B. Miller and Karin S. Warnelius-Miller Trustees, U/T/A/D 1/21/2016", along with Garden Creek Ranch LLC(all together "Plaintiffs") filed the complaint against defendants Travelers Property Casualty Company of America ("Travelers"), Milt Brandt General Insurance ("MBGI"), Gregory Marguglio ("Marguglio"), Reinhard Thiel ("Thiel"), and Does 1-75 for causes of action arising out insurance transactions and subsequent loss claims (the "Complaint"). The FAC contains four causes of action for: 1) breach of contract; 2) bad faith; 3) negligence; and 4) conspiracy. This matter is on calendar for four motions to compel. Thiel and Travelers have each filed a motion to compel further responses to special interrogatories ("SIs") against Plaintiffs under Code of Civil Procedure ("CCP") § 2030.300, and have each filed a motion to compel further production of documents ("RPODs") from Plaintiffs under CCP § 2031.310.

Plaintiffs aver that further responses are forthcoming, and that they have already served more than 2000 pages of discovery documents on September 17, 2024. Plaintiffs' counsel presents substantial evidence of the discovery defects stemming from his own personal tumult, and that the nature of the issue was of sufficient seriousness that the lack of diligence does not appear to be undue. Plaintiffs' counsel is persuasive that taking such matters against his clients, including the possible imposition of sanctions, appears generally against the interests of justice.

Assuming that Plaintiffs comply with what they represented to the Court, the motions to compel are potentially moot. At minimum, the production for the RPODs is materially different than that underlying the original motion. However, the Court maintains jurisdiction to determine the sufficiency of the responses. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 410-411. The Court also maintains jurisdiction to

determine whether sanctions are appropriate for the original responses, and the supplemental responses. *Ibid*. The Court has no briefing on the sufficiency of the supplemental responses, as it is unclear whether they have even been served as of this date.

Therefore, the matter is continued to October 30, 2024, at 3:00 pm in Department 19.

If the supplementary responses resolve the issues of the sufficiency of the discovery responses, the Defendants are required to file a declaration with the Court at least 14 days in advance of the hearing informing the Court of what issues have been resolved and what remains outstanding. The parties are encouraged to meet and confer on the issue of monetary sanctions. Should sanctions remain unresolved, they will be addressed on the above hearing date.

If the supplemental responses fail to resolve the bases underlying the motions, the parties are required to meet and confer on the sufficiency of those responses. Should they remain at issue, Plaintiffs are required to serve and file an updated separate statement along with any supplemental briefing by October 21, 2024. The Court thereafter will determine if it needs additional briefing on any potential contentions therein. If the Court does not receive supplemental briefing on the substantive nature of the discovery responses, it will rule on the substance of what is before it at that time.

****This is the end of the Tentative Rulings.*****